

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

VICKIE PEEKS

PLAINTIFF

NO. 1:17CV165-JMV

**NANCY BERRYHILL,
COMMISSIONER OF SOCIAL SECURITY**

DEFENDANT

O R D E R

Before the Court is Plaintiff's second motion for attorney fees pursuant to § 206(b)(1) of the Social Security Act, 42 U.S.C. § 406(b)(1) [28]. Essentially, counsel for Plaintiff seeks an amended award of fees or an additional \$3,126.82 from Plaintiff's back benefits for work performed before this Court, having now learned the Social Security Administration ("agency") has approved a fee much smaller than counsel anticipated for counsel's work before that agency.¹ By way of response [29], Defendant points out only that pursuant to this Court's November 9, 2020, order approving \$148.63 in fees, payment of any fee in this case is authorized under 42 U.S.C. § 1383(d)(2), not § 406. Additionally, it is notable that the record indicates the instant motion was served on Plaintiff and that no response has been filed by Plaintiff.

The Court finds, for the same reasons stated in the Court's October 29, 2020, order²

¹ By notice dated October 9, 2020, Plaintiff was awarded \$45,970.86 in back benefits after a favorable decision by an ALJ following remand to the agency by this Court. Apparently, the agency approved only \$2,873.18 in fees for counsel's work before the agency instead of an anticipated \$6,000.00.

² In that order [24] the Court essentially found the actual fee request, \$5,492.71, was reasonable under the facts of the case but that applicable law authorized payment of same under 42 U.S.C. § 1383(d)(2), not § 406. The parties were directed to show cause why the fee request should not be granted under § 1383(d)(2); and by order [27] dated November 9, 2020, the fee was approved under § 1383(d)(2), the Court hearing no objection from any party.

(modified only to the extent that the actual amended fee request, \$8,619.53, amounts to only approximately 18.75% of the claimant's back benefits), the fee requested here is reasonable.

THEREFORE, IT IS ORDERED that Plaintiff's request for an additional \$3,126.82 in attorney fees payable from Plaintiff's back benefits is hereby approved pursuant to 42 U.S.C. § 1383(d)(2).³

This 21st day of January, 2021.

/s/ Jane M. Virden
U.S. MAGISTRATE JUDGE

³ While in her reply [30] Plaintiff does not expressly amend her fee request to seek an award under 42 U.S.C. § 1383(d)(2), for the sake of efficiency the Court construes the reply as an acknowledgment that the foregoing is the appropriate authorizing statutory provision.